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**UNITED STATES DISTRICT COURT**

**EASTERN DISTRICT OF CALIFORNIA**

MICHAEL BISCH, an individual,	)	Case No.: 2:23-cv-00455-DC-SCR
	)	
Plaintiff,	)	<b>DEFENDANTS' OPPOSITION TO</b>
	)	<b>PLAINTIFF'S MOTION FOR</b>
vs.	)	<b>"ADMINISTRATIVE RELIEF"</b>
	)	<b>PURSUANT TO LOCAL RULE 233 RE:</b>
COUNTY OF YOLO, et al.,	)	<b>CLERK'S DENIAL OF ENTRY OF</b>
	)	<b>DEFAULT</b>
Defendants.	)	
	)	

1 Plaintiff Michael Bisch's putative "administrative" request for an order compelling  
 2 entry of Defendants' default under F.R.C.P. Rule 55(a) contains myriad legal and factual flaws.  
 3 In the interest of brevity, this opposition will highlight those procedural events that matter, then  
 4 identify the most glaring defects.

## 5 I. PERTINENT HISTORY

6 In May of 2023, Defendants initially appeared and manifested their intent to defend  
 7 Bisch's complaint on its merits via a motion to dismiss under Rule 12(b)(6) and a special motion  
 8 to strike under California law. (ECF #s 8-9.) Judge England took those motions under  
 9 submission (ECF # 10), whereafter briefing continued (#s 13-18), but, as the case was stayed  
 10 prior to the motions' disposition (# 21), he "denied" the motions without prejudice to their  
 11 refiling post-stay (#22).

12 After the stay ended on June 24, 2024 (#33), Judge England afforded Defendants until  
 13 October 4, 2024 to refile their previous pleading challenges (#s 36-38), which deadline  
 14 Defendants met (#s 39-40). Judge England again took the motions under submission (#41), then  
 15 reassigned the case to the Honorable Dena Coggins (#43), who set and reset a briefing schedule  
 16 (#s 44, 46, 48). Briefing completed in January, 2025. (#s 50-54.) Nothing further has occurred  
 17 directly regarding those motions.

## 18 II. LISTING OF DEFECTS

19 (a) A request for entry of default hardly qualifies as "administrative" within the meaning  
 20 of Local Rule 233 (i.e., akin to scheduling or page limits), rendering the subject motion wildly  
 21 improper in form. Nonetheless, to avoid a third iteration in some new wrapping, Defendants will  
 22 address the default issue *per se*.

23 (b) Subdivision (a) of Rule 55 pertains solely to the *clerk's* entry of default, yet Bisch  
 24 seeks a default order from the Court reversing the clerk's refusal. Rule 55(a) does not authorize  
 25 such a judicial order.

26 (c) Generally, a defendant who manifests an intent to defend the action on its merits may  
 27 not be defaulted under Rule 55(a) by a mere failure to answer. *Direct Mail Specialists v. Eclat*  
 28 *Computerized Technologies*, 840 F.2d 685, 689 (9th Cir. 1988). Once a party so appears, the

1 clerk may not enter its default. *Franchise Holding II, Ltd. Liab. Co. v. Huntington Rests. Grp.,*  
 2 *Inc.*, 375 F.3d 922, 927 (9th Cir. 2004) ("Therefore, if HRG appeared, the clerk's entry of default  
 3 is void ab initio," citing *Direct Mail*). Bisch concedes Defendants thus appeared multiple times.

4 (d) Although willful failure to plead within a time ordered by the court can result in  
 5 default, no such deadline existed here. Judge England's use of the term "denied" with respect to  
 6 Defendants' initial pleading motions meant procedurally vacated, not substantively rejected, as  
 7 reinforced by his explicit allowance of their refiling post-stay. Accordingly, a deadline to answer  
 8 never commenced running. Had Judge England intended for Defendants to answer before the  
 9 motions proceeded, he would have instructed the motion to dismiss to be refiled under Rule  
 10 12(c).

11 (e) Bisch's unconditional stipulations to briefing schedules on the (post-stay) renewed  
 12 motions belie his current assertion that the lack of an answer by July 8, 2024 wholly barred those  
 13 motions from renewal. Nor did his oppositions filed at the end of 2024 raise such a procedural  
 14 challenge or otherwise suggest a default scenario. Likewise silent was Bisch's May 2025 request  
 15 for a status conference. (#55.)

16 (f) Bisch cannot, and does not, cite authority for the notion that whether a defendant  
 17 propounds discovery bears on a Rule 55 default. Neither law, nor logic, requires a party to seek  
 18 information from his opponent, especially prior to settling of the pleadings when the borders of  
 19 relevancy remain inchoate. His companion assertions about discovery in the state court action  
 20 run even farther afield. See generally *George & Anna Portes Cancer Prevention Ctr., Inc. v.*  
 21 *Inexco Oil Co.*, 76 F.R.D. 216, 217 (W.D. La. 1977) (participation in discovery does not bear on  
 22 Rule 55 analysis).

23 (g) Even if Defendants had not timely and repeatedly appeared to contest the merits,  
 24 Bisch's assertions about dissatisfactions with Defendants' document production lack bearing on  
 25 default – he cites no order from the magistrate in this regard. (*Ibid.*)

26 (h) The worst aspect of the putative default is Bisch's failure to claim, much less  
 27 establish, any prejudice resulting from the purported answer filing delay. To the contrary, the  
 28 special motion to strike alerted him to Defendants' factual position far beyond what a typical

1 answer would do.

2 **III. CONCLUSION**

3 The subject default motion bears so many, and such obvious, flaws that Defendants feel  
4 sheepish about taking the Court's time to discuss them, and did so as succinctly as feasible.  
5 Whether the poverty of Plaintiff's legal analysis exceeds the inequity of the outcome sought  
6 presents a close call.

7 Dated: July 30, 2025

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8 */s/ Serena M. Warner*

9 By: \_\_\_\_\_

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